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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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### **REGULAR MEETING AGENDA**

### **TUESDAY, May 8, 2012, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

**The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.**  
*(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)*

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the March 2012 Regular Meeting (*Attachment A*)

#### **3. PRESENTATION / TRAINING**

- a) N/A

#### **4. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### **5. BOARD MEMBER COMMENTS**

#### **6. NEW BUSINESS**

- a) 2010 Annual Report
- b) Case Prioritization
- c) Early Warning System(s) / Case Tracking
- d) Media Articles:

- *Sheriff's sergeant under investigation. Palmer has been the subject of four complaints, one \$150,000 settlement*
- *"This is my fucking court and I own it!" Sheriff's deputy retires before he can be chastised by review board for outburst*

## 7. UNFINISHED BUSINESS

- a) Business Process Reengineering (BPR) Update
- b) Rules Committee Update

## 8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 9. SHERIFF / PROBATION LIAISON QUERY

## 10. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
- b) 11-016 / Hohenstein & Patzer: Request for reconsideration

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (14)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

## **10-117**

1. Death Investigation/Drug Overdose - Deputy 1 found inmate Mark Johnson unresponsive after being alerted by his cell mate of his condition. It was later determined that he died of a drug overdose.

### **Recommended Finding:** Action Justified

**Rationale:** Upon discovery of a non-responsive inmate, Deputy 1 requested medical assistance, and life-saving measures were initiated until Johnson was pronounced deceased. The Medical Examiner attributed the death to an overdose of heroin and prescription drug toxicity, and the manner of death was classified an accident. Toxicology tests were positive for morphine, codeine, 6-monoacetylmorphine (together, morphine, with traces of codeine and 6-monoacetylmorphine indicate use of heroin), venlafaxine and norvenlafaxine, doxepin, tramadol, desmethyltramadol, 10-hydroxycarbazepine and bupropion. There is no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department personnel. The actions of deputies were lawful, justified and proper.

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## **11-026**

1. Illegal Search – Deputy 1 approached the complainant's vehicle in a "defensive stance" and ordered him to place his hands on the steering wheel.

### **Recommended Finding:** Action Justified

**Rationale:** Deputy 1 was dispatched to an unknown situation based upon a citizen's report of the complainant disturbing the peace, following a road rage incident. Deputy 1 arrived on scene and observed the complainant's vehicle blocking the parking space of the reporting party. Deputy 1 said he approached the complainant who was seated in his vehicle, greeted him, and directed him to place his hands on the steering wheel for his safety. The reporting party stated the deputy asked three times before Reyes complied with the order. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 in response to the complainant's question of why he was being asked to place his hands outside his van "like an airplane," called for back-up and said the complainant was non-compliant.

### **Recommended Finding:** Action Justified

**Rationale:** The complainant said he followed every one of Deputy 1's commands, while Deputy 1 explained that the complainant repeatedly asked "why" when given lawful instructions to Reyes. The complainant admittedly questioned Deputy 1's command to stick his arm out the window, and this failure to comply escalated the deputy's response. There is safety in numbers and deputies request back-up for a variety of reasons to include non-cooperation. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

3. Excessive Force – Deputy 1, with Mace in hand, ordered the complainant from his vehicle and face down on the ground for handcuffing.

### **Recommended Finding:** Action Justified

**Rationale:** The complainant said he complied with every one of the deputy's commands. Deputy 1 described the complainant as argumentative and uncooperative. Deputies are trained to choose the available force option which is reasonable and necessary for the circumstances, and to gain control of a situation. Peace Officers may use nonlethal chemical agents in an offensive manner when their presence and verbal commands are ineffective. Suspects must not gain an advantage, therefore, deputies may need to use a force option which exceeds the subject's force level or Force + 1. Although the nonlethal chemical agent was not utilized, Deputy 1 had the authority to use a threat of force to gain compliance and his actions were lawful, justified and proper.

4. Misconduct/Intimidation – Deputy 1 told the complainant, "This is the way you want it, I could hurt you too if

that's what you want."

Recommended Finding: Not Sustained

Rationale: The reporting party and the back-up deputy said they did not hear Deputy 1 make this type of remark. Due to the length of time from the incident until he was questioned, Deputy 1 did not recall making this statement. There was no audio recording or other available evidence to refute or corroborate this statement.

5. Discrimination/Racial – Deputy 1 harassed and humiliated the Filipino complainant based on racial profiling and false accusations by a hysterical Caucasian female.

Recommended Finding: Unfounded

Rationale: Sheriff's Policy and Procedure, Discrimination, states that employees shall not express any prejudice or harassment concerning race, etc. Deputy 1 had no advance information as to the race of the complainant to create a profile. Deputy 1 legally contacted the complainant and took necessary actions based upon a report of road rage and disturbing the peace. After the reporting party declined prosecution, the complainant was permitted to leave. No derogatory comments or actions related to the complainant's race were identified through the course of this investigation. The evidence shows the lawful actions taken by Deputy 1 were justified and the alleged discrimination cannot be attributed to Deputy 1.

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## **11-028**

1. Criminal Conduct – Deputy 1 refused to enforce the law with regard to a trespasser threatening harm and/or illegally grading an easement on the complainant's property on February 28, 2011.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 failed to properly investigate a disturbance that occurred on March 7, 2011.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Criminal Conduct – Deputy 1 confiscated and erased videotape evidence of a disturbance on March 7, 2011.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Illegal Search & Seizure – Deputies 1-4 searched the complainant's home including drawers, dresser, and closet(s) for 3.5 hours on March 7, 2011.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Criminal Conduct – Deputy 1 did nothing when the complainant requested a Citizen's arrest and/or Temporary Restraining Order (TRO) after a neighbor trespassed and threatened her on March 7, 2011.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputies 1 - 4 did not review videotape evidence, refused to investigate, and/or did not take a report of harassment on March 13, 2011.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Excessive Force – Deputy 1 “strong-armed the complainant” and pried a camera from her hands on March 13, 2011.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Procedure – Deputy 1 interviewed a suspect then left the complainant’s premises without interviewing her, reviewing evidence and/or taking a report.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure – Deputies 1 - 4 failed to serve a suspect for over 2 weeks with a TRO (Temporary Restraining Order) filed by the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Criminal Conduct – Deputy 3 refused to take a report of animal abuse committed by his son.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **11-029**

1. Death Investigation/Traffic Pursuit – Deputy 1 initiated a vehicle pursuit of a carjacking suspect, which resulted in the death of Jamie Summer Guillen & Roosevelt Lewis Jr.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation. Deputy 1 initiated a pursuit in compliance with Sheriff’s Policy & Procedure 6.43, Vehicle Pursuit, after the suspect vehicle intentionally drove at him head-on and sideswiped his patrol vehicle. Deputy 1 acted appropriately and within the law when he attempted to stop the suspect. The three to four minute pursuit reached speeds of 80-95 mph in light to moderate traffic. The suspect, on her own volition and while under the influence of methamphetamine, sped away without regard for her own or anyone else’s safety before crashing the vehicle and killing herself and her passenger. The evidence shows Deputy 1’s conduct was lawful, justified and proper.

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## **11-031**

1. Misconduct/Procedure – Deputy 2 “miscategorized” a missing family for 11 months before acknowledging that “something bad happened.”

Recommended Finding: Action Justified

Rationale: The complainant believed that the case was not properly classified to ensure proper investigation. The case was classified as a Missing Persons case since it was initially reported on February 15, 2010. Because of the unknown circumstances surrounding the missing persons, Homicide Detective Deputy 2 was assigned to investigate the disappearance in accordance with Sheriff’s Department Policy 6.57, Missing Persons. There has been no evidence uncovered to show that a crime has been committed to warrant another classification. Deputy 2 acknowledged that he offered his opinion to the family and the media after eleven months stating that

“something bad had happened,” or words to that effect, because the missing family’s disappearance had not been solved. The Missing Persons case remains open and active and will remain so until the family is located or evidence of a crime is determined. The evidence shows that the case has been properly classified as Missing Persons was lawful, justified, and proper.

2. Misconduct/Procedure – Deputies 2 and 3 withheld information from the complainant during an ongoing investigation.

Recommended Finding: Action Justified

Rationale: The complainant stated that he shared with Deputy 2 information/evidence that he discovered, and Deputies 2 and 3 failed to provide any update or status reports regarding that information/evidence; nor did they provide any reciprocal information. Deputy 2 stated that he shared information with the complainant that was available to other family members provided it did not damage the integrity of the investigation. Deputy 3 declined to respond to the complainant’s request for information in order to preserve the integrity of the investigation. Department Policy 7.3, Release of Information, precludes release of any information pertaining to cases under investigation. The evidence shows the alleged conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 failed to respond to the complainant’s email and telephone contacts.

Recommended Finding: Action Justified

Rationale: Deputy 2 and the complainant communicated on occasion via email and telephone until early February 2011. During the period February 6-10, 2011 the complainant sent Deputy 2 a number of emails offering information and opinions related to events and evidence that he discovered. The complainant was insistent in his communications and challenged the credibility and integrity of the Missing Persons investigation. Deputy 2 was advised by his supervisor, Deputy 3, to no longer communicate with the complainant. Deputy 3 notified the complainant via e-mail that all communications with San Diego Sheriff’s Department should now be directed to Deputy 3. Deputy 2 complied with the direction of his supervisor and the evidence shows the alleged conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 used “poor communication and management skills” during his contact(s) with the complainant.

Recommended Finding: Unfounded

Rationale: Deputy 3 contacted the complainant after the complainant was unsuccessful in contacting Deputy 2 during the period February 6-10, 2011. Deputy 3, Deputy 2’s supervisor, advised the complainant that he had been monitoring the case, was satisfied that the investigation had been thorough, and acknowledged that the investigation continued in search of his missing family members. Deputy 3 additionally offered to accept communications from the complainant regarding the investigation. The complainant believed that Deputy 3’s intervention was intended to threaten and intimidate him, and indicated that he would refrain from future communication. Deputy 3’s email communications were accomplished professionally and there was no evidence to show poor communication and management skills. The evidence shows that the alleged act did not occur.

5. Misconduct/Harassment – Deputy 1 sent the complainant e-mails intended for internal staff.

Recommended Finding: Unfounded

Rationale: Deputy 1 did include the complainant on one e-mail with multiple addressees which conveyed his opinion that Deputy 3 had adequately responded to the complainant’s concerns. There was no evidence to demonstrate that Deputy 1 intended to harass the complainant. The evidence shows that the alleged harassment did not occur.

6. Misconduct/Harassment –Deputy 4 sent the complainant e-mails intended for internal staff.

Recommended Finding: Summary Dismissal

Rationale: Deputy 4 retired from the San Diego Sheriff's Department in May 2011 and is no longer employed by San Diego County Sheriff's Department. The Review Board lacks jurisdiction.

7. Misconduct/Procedure – Deputy 2 prematurely dismissed a suspect in an ongoing investigation without conducting a proper investigation.

Recommended Finding: Not Sustained

Rationale: The complainant provided investigators with information about individuals he believed warranted investigation. Deputy 2 stated that all leads, provided by the complainant or any other source, were pursued in a timely manner. Deputy 2 interviewed all persons believed to hold pertinent information related to the disappearance of the Missing Persons. The Missing Persons case remains active and open and complete investigative documents were not available for review. Without access to the complete investigation there was insufficient evidence to either prove or disprove the allegation.

8. Misconduct/Procedure – Deputy 2, as the detective of record, failed to ensure accurate information on the FBI and/or Interpol websites.

Recommended Finding: Not Sustained

Rationale: The complainant contacted Deputy 2 in October 2010 and stated that the Missing Persons information was not available on Federal Bureau of Investigation or Interpol websites. The initial Missing Persons Report identifying all four missing persons and a Be-on-Lookout broadcast were completed by the responding patrol deputy on February 15, 2010 as required by Department Policy and Procedure 6.57. These reports facilitated rapid entry into the Missing/Unidentified Persons System. Deputy 2 stated that he submitted Information to Interpol on February 23, 2010. As a result of communications between the complainant and Deputy 2 in October 2010 Deputy 2 learned that one of the missing children did not appear on the Interpol public website. Deputy 2 contacted Interpol and was advised that the law enforcement site was accurate and they would ensure the public site was corrected. All four missing persons now appear on the FBI and Interpol websites available to the public. The Missing Persons case remains active and open and complete investigative documents were not available for review. Without access to the complete investigation there was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Deputy 2 “confirmed” that video of family crossing San Ysidro Border Crossing was a family reportedly missing.

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 2 confirmed in many media reports that the family seen at the San Ysidro Border Crossing was the missing family. Deputy 2 denied stating that he confirmed the family seen crossing the San Ysidro Border Crossing were the subjects of the Missing Persons Investigation. He has publicly stated on many occasions that based on the evidence of the case, combined with surveillance video, that he believed the family seen crossing the San Ysidro Border was likely to be but would not positively confirm that they were the subjects of the Missing Persons Investigation. Deputy 2 has commented on the San Ysidro Border Crossing video in hundreds of media interviews, as such there was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Procedure – Deputy 2, failed to search, in a timely fashion, the electronic files of a missing family.

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 2 failed to search and read every electronic file stored on the family computers. Deputy 2 used approved department protocol by having the San Diego FBI Regional Forensic Computer Laboratory analyze many thousands of files on the family computers; a process which the complainant felt was insufficient. Deputy 2 stated that analysis was received approximately 30 days after requested and this information was utilized in the conduct of the Missing Persons investigation. The Missing Persons case remains active and open and complete investigative documents were not available for review. Without access to the complete investigation there was insufficient evidence to either prove or disprove the allegation.

11. Misconduct/Procedure – Deputy 2, failed to investigate a person of interest.

Recommended Finding: Not Sustained

Rationale: The complainant stated that investigators had failed to investigate an individual he believed to be a person of interest. Deputy 2 stated that all leads, provided by the complainant or any other source, were pursued in a timely manner. Deputy 2 interviewed all persons believed to hold pertinent information related to the disappearance of the Missing Persons. The Missing Persons case remains active and open and complete investigative documents were not available for review. Without access to the complete investigation there was insufficient evidence to either prove or disprove the allegation.

12. Misconduct/Procedure – Deputy 2 failed to investigate family financial transactions in a timely manner.

Recommended Finding: Not Sustained

Rationale: The complainant believed that Deputy 2 had not conducted a thorough and timely review of family financial transactions. Deputy 2 denied that he failed to investigate family financial transactions in a timely manner. The Missing Persons case remains active and open and complete investigative documents were not available for review. Without access to the complete investigation there was insufficient evidence to either prove or disprove the allegation.

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## **11-035**

1. Misconduct/Discourtesy – Deputy 1 “verbally abused” the complainant while shouting in her ear.

Recommended Finding: Not Sustained

Rationale: Deputy 1 had only vague recollections of his contact with the complainant, but denied that he shouted in her ear. There were no witnesses to this alleged act or audio or video tapes to substantiate its occurrence. There was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – Deputy 1 attacked the complainant, shoving her against the wall with such force that he ruptured her silicone breast implants, leaving the complainant deformed and in need of reconstructive surgery.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that he used force on the complainant. The complainant failed to provide the required Medical Release to obtain medical records. Without this critical document and subsequent review of medical evaluation and treatment records, CLERB staff was unable to conduct a thorough investigation of this allegation and there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Intimidation – Deputy 1 “Terrorized” and frightened the complainant with violence and threats of violence, causing her to plead guilty to offenses of which she claims to be innocent.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that he “Terrorized” and frightened the complainant with violence and threats of violence. Absent witnesses to this alleged act, or audio or video tapes to substantiate its occurrence, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Harassment– Deputy 1 followed the complainant into an elevator and stood directly behind her and “Terrorized” her.

Recommended Finding: Not Sustained

Rationale: Deputy 1 had no recollection of standing directly behind the complainant in an elevator and denied any actions to terrorize her. Absent witnesses to this alleged act, or audio or video tapes to substantiate its occurrence, there was insufficient evidence to either prove or disprove the allegation.

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## **11-038**

1. Misconduct/Procedure – Deputy 1 initially refused to provide escort to the complainant on the reservation to pick up a runaway juvenile.

Recommended Finding: Action Justified

Rationale: After an argument between mother and daughter, the minor contacted a relative and was given permission by an adult for a visit. Per Sheriff's procedures, Deputy 1 determined the minor was not considered a runaway. Deputy 1 stated the complainant provided different reason(s) for needing an escort and lack of gasoline was not a law enforcement issue. Once the complainant stated a safety concern, Deputy 1 agreed to escort her to/from the reservation. The evidence shows the conduct was lawful, justified and proper.

2. Misconduct/Intimidation – Deputy 1 told the complainant, "If I have to go get her (Mariah) I will file a CPS case against you for abuse."

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied this action. This was an unrecorded conversation between the deputy and the complainant with insufficient evidence to either prove or disprove the allegation.

3. False Reporting – Deputy 1 filed a CPS report of physical abuse against the complainant.

Recommended Finding: Not Sustained

Rationale: The Child Abuse and Neglect Reporting Act mandates law enforcement personnel to report any known or reasonably suspected instance of "child abuse or neglect" that has come to their attention during the course of their professional capacity or employment. The corporal punishment described by the complainant does not constitute physical abuse. CAD records indicated information was collected in case a referral was needed, but Deputy 1 determined there was no need and a CPS referral was not filed. PC§ 11167.5., Confidentiality of Report, deems CPS records as confidential and CLERB was unable to corroborate whether or not a report was filed. There was insufficient evidence to either prove or disprove the allegation.

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## **11-039**

1. Misconduct/Discourtesy – Deputy 1 screamed at the complainant while discussing a noise complaint against him.

Recommended Finding: Summary Dismissal

Rationale: The complainant formally withdrew his complaint against Deputy 1 on March 08, 2012. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant.

2. Misconduct/Discourtesy – Deputy 1 made a number of rude remarks to the complainant, including telling him, "If you were my neighbor, I would hate you for having so many cars parked on the street."

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputy 1 opened the complainant's mailbox and looked inside, without leaving any type of correspondence.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Retaliation - Deputy 1 returned to the complainant's home the same day the complainant spoke with his supervisor about his conduct and issued another citation to a resident of the home.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure - Deputy 1 issued a second, identical citation to the complainant's father within a 2-week period, not allowing him sufficient time to address the first citation.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Harassment – Deputy 1 issued three (3) citations, in sequential order, to the complainant's family during a 2-week period, indicating to the complainant that he was being "Targeted."

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Discrimination/Racial - Deputy 1's conduct toward the complainant is racially motivated.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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#### **11-047**

1. Misconduct/Discourtesy – Deputy 2 asked Brown, "Are you fucking stupid?" and yelled at her during a traffic stop.

Recommended Finding: Not Sustained

Rationale: Deputy 2 is currently on medical leave and unavailable for comment. His only statement on record regarding the allegations against him are recorded in an April 29, 2011 email to CLERB staff, in which he asserted that the accusations in this case were "Completely off base," and that testimony from involved deputies on scene could attest to this assertion. Deputy 1, who provided cover for Deputy 2 during this traffic stop and witnessed the entire contact with Brown, denied hearing Deputy 2 ask Brown, "Are you fucking stupid?" or yell at Brown at any time. The aggrieved is no longer in contact with her passenger and potential witness from that evening, and was unable to locate him for questioning by CLERB staff. Per Deputy 1, Deputy 2 did not use any profanity toward Brown, was not rude and did not yell at her during this traffic stop. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 2 asked Brown, "What the hell were you doing?" and made sarcastic remarks during a traffic stop.

Recommended Finding: Not Sustained

Rationale: Deputy 2 is currently on medical leave and unavailable for comment. His only statement on record regarding the allegations against him are recorded in an April 29, 2011 email to CLERB staff, in which he asserted that the accusations in this case were "Completely off base," and that testimony from involved deputies on scene could attest to this assertion. Deputy 1, who provided cover for Deputy 2 during this traffic stop, and witnessed the entire contact with Brown, denied hearing Deputy 2 ask Brown, "What the hell were you doing?" or make any sarcastic remarks to her during this traffic stop. Per Deputy 1, Deputy 2's contact with Brown was professional and courteous. The aggrieved was unable to provide current contact information on her passenger from that evening, so without his corroborating testimony and absent any video footage or audio recording of this contact, there was insufficient evidence to either prove or disprove the allegation.

3. Illegal Search & Seizure/Vehicle – Deputy 2 searched Brown’s vehicle for drugs during a traffic stop for a broken tail light.

Recommended Finding: Action Justified

Rationale: Deputy 2 conducted a traffic stop on Brown due to her vehicle being un-plated. Sheriff’s Dispatch communications confirmed that the traffic stop was initiated for an un-plated vehicle. Per Deputy 1, witness deputy on scene, Deputy 2 searched Brown’s vehicle for any illegal contraband and not exclusively for drugs. According to Section 4.14b - Search and Seizure/Vehicles – of the California Peace Officers Legal Sourcebook, a search is upheld as legal, provided a valid consent to search a vehicle and/or something inside it has been obtained. The aggrieved could not recall being asked for, or granting consent to search her vehicle. Deputy 1 was present throughout the contact and reported hearing Deputy 2 ask for consent, and the aggrieved grant it. The evidence shows the alleged act did occur, but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 conducted several DUI tests during a traffic stop.

Recommended Finding: Action Justified

Rationale: Deputy 2 initiated a traffic stop on Brown due to her vehicle being un-plated. While in the process of pulling over, Brown was observed running through a red left turn signal in violation of CVC 21453 – Red Arrow. Deputy 2 consulted with Deputy 1 prior to contacting Brown, asking if Deputy 1 had seen the aggrieved run the red light; which he had. Deputy 1 reported that Deputy 2 conducted field sobriety tests because of Brown’s physical symptoms (shaking /nervousness) and her observed poor driving (running a red light while Deputy 2 was behind her at a stale red light). These behaviors caused Deputies 1 and 2 to believe that Brown could have been operating a vehicle while under the influence of drugs and/or alcohol, providing Deputy 2 the legal basis to administer the field sobriety tests. The evidence shows the alleged act did occur, but was lawful, justified and proper.

5. Misconduct/Intimidation – Deputy 2 “used his authority to intimidate and frighten” Brown.

Recommended Finding: Not Sustained

Rationale: Deputy 2 is currently on medical leave and unavailable for comment. In an unsolicited statement to CLERB Staff on April 29, 2011, Deputy 2 asserted that the accusations in this case were “Completely off base,” and that testimony from involved deputies on scene could attest to this assertion. Deputy 1, who provided cover for Deputy 2 during this traffic stop and witnessed the entire contact with Brown, denied seeing or hearing Deputy 2 use his authority to intimidate and frighten Brown. There was insufficient evidence to either prove or disprove the allegation.

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## **11-103**

1. Excessive Force – Deputy 1 struck the complainant with his patrol vehicle causing injury.

Recommended Finding: Action Justified

Rationale: The complainant stated he had just left a liquor store and was driving to an apartment complex pool facility to shower when he realized that Deputy 1 was following him. The complainant did not recall if Deputy 1 had used emergency lights and/or siren. The complainant entered a cul-de-sac and stopped his vehicle when he heard the approaching patrol vehicle. He tried to quickly exit his vehicle and was struck by Deputy 1’s patrol vehicle and thrown onto its hood. Deputy 1 had been dispatched to a liquor store to investigate a reported suspicious person and while en route observed the vehicle driven by the complainant, a vehicle that had been previously reported stolen. Deputy 1 pursued the complainant into the cul-de-sac using emergency lights and siren, and when the complainant stopped. The use of force to effectively terminate or afford a deputy control of an incident is authorized under Sheriff’s Department Use of Force Guidelines. Deputy 1 attempted to use his patrol vehicle to block the complainant from exiting the stolen vehicle and prevent his escape. The complainant was struck by the patrol vehicle, fell onto the hood, and then fled the scene on foot. The evidence shows that the alleged use of force did occur but was lawful, justified and proper.

2. Excessive Force – Deputy 1 pointed his firearm at the complainant.

Recommended Finding: Action Justified

Rationale: Deputy 1 acknowledged that he pointed his firearm at the complainant. Deputy 1 feared the complainant was armed when he saw the complainant place his hand in his pocket. Deputy 1 drew and pointed his firearm at the complainant in an attempt to detain him. The complainant fled the scene with Deputy 1 in foot pursuit. Deputy 1 pointed his firearm at the complainant because the complainant was seen driving a stolen car, failed to yield, and attempted to flee the scene. The evidence shows that the alleged act did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 yelled to the complainant “Stop so I can shoot.”

Recommended Finding: Action Justified

Rationale: Deputy 1 denied making the statement as alleged. Deputy 1 admittedly yelled to the complainant, “Stop, or I’ll shoot,” to warn the complainant that force would be used if he was not compliant. Deputy 1 did not fire and the complainant fled the scene on foot. The evidence shows that the alleged act did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 failed to provide adequate medical care.

Recommended Finding: Action Justified

Rationale: Deputy 1 requested that medical personnel report to the Sheriff’s Substation because the complainant had stated he experienced pain in his wrist. Paramedics and medical staff responded, evaluated the complainant, and treated him for small scrapes. Paramedics observed no deformity, discoloration, or swelling of the complainant’s right arm and the complainant was released back to Sheriff’s custody. The evidence shows that the alleged conduct did occur and was lawful, justified and proper.

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## **11-127**

1. Death Investigation/Suicide - Deputy 1 found inmate Alexander Franklin Clark unresponsive at the George Bailey Detention Facility.

Recommended Finding: Action Justified

Rationale: Deputy 1 was notified via intercom that Clark was feeling ill. He told Clark that he needed to get dressed so that he could be taken to the medical dispensary. When Deputy 1 returned to take Clark to the dispensary he was told by his cellmate that Clark had fallen over and was non-responsive. Upon discovery of the non-responsive inmate, Deputy 1 requested medical assistance and life-saving measures were initiated. Clark was transported to Sharp Chula Vista Medical Center via ambulance and was pronounced brain dead the following day. The Medical Examiner certified the manner of Clark’s death to be suicide, and the cause of death to be complications of anoxic/ischemic brain injury due to hyponatremia which resulted from acute water intoxication. There was no complaint or evidence of misconduct or a failure to act by any Sheriff’s Department personnel.

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## **12-006**

1. Misconduct/Procedure – Deputy 1 denied the complainant visitation at the Las Colinas Detention Facility (LCDF) after multiple visits.

Recommended Finding: Action Justified

Rationale: The complainant visited an inmate at Las Colinas on November 11 and December 1, 2, 9 and 15, 2011. Deputy 1 subsequently denied the complainant visitation due to his probationary status, prior prison commitment and recent arrest history. More importantly, every person who, having been previously convicted of a felony and confined in any state prison in this state, are excluded from visiting per California Penal Code

4571. The Facility Commander reviewed and upheld the decision made by Deputy 1. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

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## **12-017**

1. Misconduct/Discourtesy – Deputy 1 was discourteous to the complainant when he said, “What kind of mother are you? I should turn you in to CPS.”

Recommended Finding: Not Sustained

Rationale: The complainant had expected her son to call for a ride home after attending a social event which extended past curfew. The complainant stated that Deputy 1 explained the curfew regulations to her and said that parents could not allow juveniles to be out past curfew. Deputy 1 denied making the statement as alleged, indicating that he advised the complainant that he could write a report to Child Protective Services documenting that she had allowed her son and nephew to be unsupervised after curfew in violation of a City of San Diego Municipal Code. Deputy 1 did not submit any such report. There were no witnesses to this communication and there is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 1 used profanity when he said to the complainant, “This is fucking ridiculous,” or words to that effect, after the complainant acknowledged she knew her son had been out after curfew.

Recommended Finding: Sustained

Rationale: After the complainant acknowledged a curfew violation, Deputy 1 commented, “It’s freaking unbelievable you would allow your son and nephew to ride the trolley at one in the morning”? Given the allegation that it occurred and the absence of a clear denial on the part of the deputy, a preponderance of the evidence supports the recommended finding. The use of coarse, violent, and profane or insolent language is a violation of Department Policy and Procedure 2.22, Courtesy, and the conduct was not justified.

3. Misconduct/Discourtesy – While taking a minor into custody Deputy 1 said, “What the fuck is wrong with your legs, what the fuck is wrong with you,” or words to that effect.

Recommended Finding: Sustained

Rationale: Deputy 1 acknowledged that that he commented on the attire of the juveniles when he asked, “What the fuck was wrong with both of your pants?” The use of coarse, violent, and profane or insolent language is a violation of Department Policy and Procedure 2.22, Courtesy, and the conduct was not justified.

4. Illegal Search or Seizure – Deputy 1 delayed the release of the complainant’s son to the custody of his parents.

Recommended Finding: Action Justified

Rationale: Communications records indicate that Deputy 1 arrived at the home of the complainant at 1:04 a.m. and departed for the home of the second juvenile at 1:31 a.m. The complainant believed that Deputy 1 delayed the release of her son for approximately 40 minutes while verifying her identity. After making contact with the complainant Deputy 1 returned to his patrol vehicle to verify the complainant’s identity, determine the appropriate San Diego Municipal Code, and prepare the citation to release the complainant’s son. Deputy 1 stated that there was an estimated 10-15 minute delay as he verified the proper San Diego Municipal Code required for the citation. The alleged act did occur but was legal, justified and proper.

5. False Report – Deputy 1 released the complainant’s son to the custody of his parents with a citation written for another juvenile.

Recommended Finding: Action Justified

Rationale: The complainant believed that Deputy 1 was so upset during the contact that he did not realize her son had signed the wrong citation. While at the complainant’s residence, Deputy 1 prepared separate citations for the juveniles. Deputy 1 mistakenly presented the wrong citation to the complainant’s son for signature, the

citation was signed, and the juvenile was released to his parents. Deputy 1 subsequently prepared a Notice of Correction and Proof of Service as required by California Rules of Court, Rule 4.103(c), Corrections. The alleged act did occur and the corrective action taken was legal, justified and proper.

6. Misconduct/Procedure – Deputy 1 released the complainant’s nephew without a citation for the curfew violation.

Recommended Finding: Action Justified

Rationale: The complainant believed that her nephew had been released without being cited for the curfew violation because her son had signed the wrong citation. Deputy 1 realized the complainant’s son signed the wrong citation and prepared a new citation for the complainant’s nephew. The complainant’s nephew signed his citation and was released to his parents. The evidence shows that Deputy 1 cited the complainant’s nephew for violation of San Diego Municipal Code 58.0101, curfew, and the act was lawful, justified and proper.

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## **12-018**

1. Illegal Search or Seizure – Deputy 1 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant was walking home from work when contacted by Deputy 1. The complainant reported that Deputy 1 stood in front of him blocking his progress during the contact but at no time was the complainant told that he was not free to leave. Deputy 1 was on patrol in a marked Sheriff’s vehicle and was identifiable by his uniform with Sheriff’s Department markings. Deputy 1 requested the complainant’s name/identification and the complainant complied. Consensual contacts require no objective reasons or justifications for initiating the contact, and questions regarding identity and a request for identification are allowed. The complainant was not restrained or detained and was free to leave or not cooperate during the five-to-eight minute contact. The evidence shows the alleged conduct did occur but was lawful, justified and proper.

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*End of Report*